IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**APPEAL NO. 26 OF 2002**

IN

PETITION NO. 47 OF 1998

IN

PETITION NO. 603 OF 1996

Shri B.M. Sreenivasiah,
Smt. Lakshmidevamma Charities Trust ... Appellant
(Org.Respondent)

Versus

Ragini Narayan ...Respondent
(Org.petitioner in
Misc.Petn.No.47/98)

Mr. B.G.Bagwe with A.S.Karwande & Co.for Appellant.

Mr. B.B.Saraf with S.P. Dalal i/b. Dalal & Co. for Respondent.

**CORAM: D.K.DESHMUKH &**
**J.H.BHATIA,JJ.**

**DATE: 15th October,2007.**

**P.C.**

1. By this Appeal, an order made by the learned Single Judge of this Court revoking the grant of Letter of Administration with the Will attached has been challenged. The Will was left behind by B.S.Narayan, who died on 23rd August, 1995.

2. The relevant admitted facts are :-

(i) B.S.Narayan, who was the son of one Mr. B.M.Srinivasaiah, who died on 15.9.1953. He had two wives. One was Lakshamamma (now deceased). B.S.Narayan was the son from the first wife, Lakshamamma. B.M.Srinivasaiah, the father of B.S.Narayan had a second wife. Her name was Lakshamidevamma.

(ii) On the death of B.S.Narayan, Lakshamidevamma applied for Letter of Administration with the Will of B.S.Narayan attached. The Letter of Administration was granted on 27.4.1998.

(iii) One Ragini, who is the respondent No.1, claiming to be the legally wedded wife of B.S.Narayan, the deceased, filed an application for revocation of the grant of Letter of Administration with the Will of B.S.Narayan attached.

(iv) During the pendency of the revocation petition, the original petitioner Lakshmidevamma expired. Because of an order made by the Division Bench of this Court dated 10.1.2000 in Appeal No.1259 of 1999, the present appellant, Shri B.M.Srinivasaiah, Smt. Lakshmidevamma Charities Trust, which claims to be the beneficiary of the Will left behind by B.S.Narayan, was permitted to contest the revocation petition.

(v) The revocation petition filed by Ragini was heard and disposed of by the order passed by the learned Single Judge of this Court dated 27.9.2001 which is challenged in this Appeal.

(vi) Admitted position is that the Letter of Administration with the Will of B.S.Narayan attached has been revoked on the ground that though Ragini was his legally wedded wife, she was not cited in the petition filed for the Letters of Administration.

3. Heard learned Counsel for both the sides.

4. So far as the question whether Ragini who is the legally wedded wife of deceased B.S.Narayan or not is concerned, there is a finding of fact recorded by the learned Single Judge that she was legally married to the deceased. The learned Counsel appearing for the

appellant is not able to point out to us any error in that finding. Therefore, we see no reason to interfere with the order passed by the learned Single Judge of this Court revoking grant of Letter of Administration with the Will of B.S.Narayan attached.

5. Now, as a consequence of revocation of the Letter of Administration, the original petition filed for Letters of Administration, being Petition No.603 of 1996, will revive. However, it is also common ground that Lakshmidevamma, who had filed that petition, is no more. The appellant-Trust claims to be the beneficiary of the Will left behind by B.S.Narayan and in that capacity the Trust claims that it is entitled to prosecute that petition. This position is disputed by Ragini. In our opinion, however, the question whether the Appellant-Trust is entitled to prosecute the petition filed by Lakshmidevamma for the Letters of Administration of the Will of B.S.Narayan cannot be decided in this Appeal. In our opinion, the following order would meet the ends of justice :-

(i) In case the Appellant-Trust, within a period of four weeks from today, take out an application seeking permission of the Court to prosecute Petition No.603 of 1996, they shall join Ragini as respondent and serve copy of that application on the Advocate appearing for

Ragini in this Appeal. Thereafter, that application shall be decided in accordance with law by the learned Single Judge taking Testamentary Petitions.

(ii) In case, it is held that the Appellant-Trust is entitled to prosecute that petition, the learned Counsel appearing for the appellant has stated before us that Ragini will be cited as an heir in that petition and thereafter Citation shall be served on the Advocate appearing for Ragini in this Appeal and thereafter the petition shall be decided in accordance with law.

Appeal is disposed of.

Copy of this Order duly authenticated by the Associate/Private Secretary be supplied to the parties.

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**(D.K. DESHMUKH,J.)**

**(J.H.BHATIA,J.)**